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IN THE

Supreme Court of the United States

WESCLEY FONSECA PEREIRA,
Petitioner,

v.

JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR *AMICUS CURIAE* THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The American Immigration Lawyers Association ("AILA") is a national association with more than 13,000 members throughout the United States, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality, and naturalization; to cultivate the jurisprudence of the immigration laws; to facilitate the administration of justice; and to elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. AILA's members practice regularly before the Department of Homeland Security ("DHS"), immigration courts, and the Board of Immigration Appeals ("BIA"), as well as before the United States District Courts, Courts of Appeals, and the Supreme Court of the United States.

AILA has a deep understanding of the significant consequences the stop-time rule of the Immigration Nationality Act (the "INA") has for individuals placed in removal proceedings, and respectfully submits this brief as *amicus curiae* to alert the Court to the extreme practical importance of the question presented and the severe inequity created by the well-established circuit conflict over this issue.

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[1] Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), timely notice was provided to counsel of record for all parties, and this brief is accompanied by the written consent of all parties.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The "stop-time" rule the First Circuit interpreted below determines whether many noncitizens facing deportation after years of residence in the United States are eligible for a discretionary form of relief called "cancellation of removal." As the petition details, there is a firmly-established conflict in authority over the proper application of that rule, and the issue recurs frequently.

Amicus submits this brief to demonstrate the exceptional importance of correctly determining eligibility to apply for cancellation of removal. The stakes of that determination are extreme: Noncitizens who receive cancellation are given status as lawful permanent residents and put on the path to citizenship; those denied it are removed from the country, torn from their families, communities, and livelihoods, and many are not permitted to even apply to return to the country for several years.

Further, cancellation of removal is the only form of relief from removal available to many noncitizens, and it is open only to the most deserving of applicants who can meet a demanding eligibility threshold. To be eligible for cancellation of removal, a noncitizen who is not a lawful permanent resident must show that he is a person of "good moral character"; that he has not been convicted of any of a broad range of criminal offenses; that he has an immediate family member who is a U.S. citizen or lawful permanent resident that would suffer "exceptional and extremely unusual hardship" if he were deported; and, finally, that he has maintained a ten-year peri-

od of continuous residence in the United States. 8 U.S.C. § 1229b(b)(1).[2]

Cancellation of removal is therefore the last, best hope for the most deserving noncitizens seeking to remain in the country with their family members. Indeed, cancellation of removal is the only way those family members—who are U.S. citizens or lawful permanent residents—can be saved from extreme hardship. Properly and consistently determining eligibility for that relief is therefore exceptionally important not just to the individuals who have lived in this country for years as productive members of our nation and our communities, but to their families as well.

That eligibility for such vital relief currently depends on an arbitrary matter of geography is intolerable. Review is all the more necessary because the First Circuit's reading of the statute is profoundly erroneous. Amicus therefore respectfully urges the Court to grant the petition to resolve the well-established circuit conflict over the question presented.

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[2] Slightly less onerous requirements apply to lawful permanent residents seeking cancellation of removal. *See* 8 U.S.C. § 1229b.

ARGUMENT

I. THE COURT SHOULD ACT TO ADDRESS A WELL-ESTABLISHED CIRCUIT SPLIT THAT WILL AFFECT THOUSANDS OF IMMIGRANTS

A. The Decision Below Reinforces A Well-Established Circuit Split Regarding The Stop-Time Rule

The First Circuit's decision cements a well-established circuit split concerning a matter of great importance: How the government measures the required period of continuous residence a noncitizen must prove to be eligible for cancellation of removal.

As noted above, one eligibility requirement for cancellation of removal is that a noncitizen must have "been physically present in the United States for a continuous period of not less than 10 years immediately preceding the" cancellation application. 8 U.S.C. § 1229b(b)(1)(A). Under the stop-time rule, the period of continuous residence ends upon service of a specific document: a "notice to appear under section 1229(a)." *Id.* § 1229b(d)(1). Section 1229(a), in turn, defines a "notice to appear" as "written notice . . . specifying" certain information, including the "time and place at which the proceedings will be held." *Id.* § 1229(a)(1). Thus, Congress provided that once a noncitizen has a notice to appear that describes the proceedings against him and sets a date and time for such proceedings, his period of continuous residence is stopped.

The First Circuit below held that the government can trigger the stop-time rule by serving a document *labeled* "notice to appear," even if that docu-

ment lacks the statutorily required components of a "notice to appear under section 1229(a)." *See* Pet. App. 2a. The First Circuit joined five other circuits in deferring to an interpretation of § 1229b(d)(1) by the Board of Immigration Appeals. *See Matter of Camarillo*, 25 I. & N. Dec. 644 (BIA 2011); *Moscoso-Castellanos v. Lynch*, 803 F.3d 1079 (9th Cir. 2015); *Guaman-Yuqui v. Lynch*, 786 F.3d 235 (2d Cir. 2015); *Gonzalez-Garcia v. Holder*, 770 F.3d 431 (6th Cir. 2014); *Wang v. Holder*, 759 F.3d 670 (7th Cir. 2014); *Urbina v. Holder*, 745 F.3d 736 (4th Cir. 2014). This deference appears outcome determinative: Prior to *Camarillo*, two courts of appeals correctly determined that the stop-time rule would apply only once a noncitizen received a notice to appear that includes the statutorily mandated information, *see Guamanrrigra v. Holder*, 670 F.3d 404, 410-11 (2d Cir. 2012); *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 937 n.3 (9th Cir. 2005), and only reversed course once the BIA adopted the opposite interpretation.

In direct and explicit conflict with those decisions, the Third Circuit has held that, under the plain text of the INA, the stop-time rule is only triggered by a notice to appear that is "in conformance with 8 U.S.C. § 1229(a)"—that is, one that notes the time and place at which the removal proceedings will take place, along with the other statutorily mandated information that is required for a document to be a "notice to appear under section 1229(a)." *Orozco-Velasquez v. Lynch*, 817 F.3d 78, 82 (3d Cir. 2016). The Third Circuit rejected the BIA's conclusion to the contrary because it "conflicts with the

INA's plain text, [and therefore] it is not entitled to *Chevron* deference." *Id.* at 81–82.

In the case below, the First Circuit considered and explicitly disagreed with the Third Circuit's reasoning. *See* Pet. App. 7a–8a. The split in authority is thus openly acknowledged and firmly entrenched.

This Court should not allow the meaning of a federal statute of this importance to turn on something as arbitrary as geography. The present case is illustrative: Wescley Fonseca Pereira remained in the country after his tourist visa expired in 2000, eventually settling in Martha's Vineyard, where he has lived for over a decade with his wife and U.S.-citizen children and is a respected member of the community. *See* Pet. 4. Less than six years after his visa expired, he was served with a notice lacking the statutorily mandated date and time. It was not until 2013, when he had been in the United States for over ten years, that Pereira was detained and placed in removal proceedings after being pulled over for failing to use his headlights.[3] *See* Pet. 13. When he then applied for cancellation of removal—at this point having been in the United States continuously for thirteen years since his visa expired—his application was denied based on the contention that the deficient 2006 notice to appear stopped the clock on his period of continuous residence. *Id.* at 13–14.

Now imagine Pereira had decided to settle with his family not in Martha's Vineyard, but in

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[3] DHS had mailed a notice to appear with date and time in 2007 to the incorrect address. As a result, Pereira did not receive any notice of proceedings against him after the deficient notice in 2006.

Stone Harbor, New Jersey, a different east coast beach community. There, under the Third Circuit's decision in *Orozco-Velasquez*, the continuous residence clock would *not* have been stopped by the deficient 2006 notice, and Pereira would have been eligible for cancellation of removal. 817 F.3d 78 at 71-82. Leaving the fate of thousands of noncitizens and their families up to an arbitrary matter of geography is intolerable, and this Court should intervene.

B. The Question Presented Recurs Frequently

Amicus's experience representing thousands of noncitizen clients reveals that the government's use of notice lacking the statutorily required date and time is common practice. In fact, as the BIA itself has noted, "DHS frequently serves" purported notices to appear without specifying the date and time of any removal hearing. *Matter of Camarillo*, 25 I. & N. Dec. at 648 (quoting *Dababneh v. Gonzales*, 471 F.3d 806, 809 (7th Cir. 2006)).

As this case well demonstrates, it can be years from the time a noncitizen receives a deficient notice until he actually receives a hearing date. Unlike in the criminal context, where the Speedy Trial Act ensures prompt prosecution of charges, *see* 18 U.S.C. §§ 3161-3174, and unlike in litigation governed by the Federal Rules of Civil Procedure, immigration law provides no assurance that the government will carry removal proceedings forward expeditiously. The majority interpretation of the stop-time rule compounds that problem by removing an incentive to even calendar an initial hearing within a reasonable amount of time.

A survey of recent judicial decisions confirms that this issue arises frequently: As the petition for certiorari notes, "All seven of [the published decisions in the courts of appeals concerning this issue] have come in the last three years alone." Pet. Br. at 3. Several unpublished or lower court decisions have addressed the impact of deficient notices to appear as well. *See Castillo v. Sessions*, 693 F. App'x 647, 648 (9th Cir. July 13, 2017); *Hernandez-Rubio v. U.S. Atty. Gen.*, 615 F. App'x 933, 934 (11th Cir. Sept. 16, 2015); *O'Garro v. U.S. Atty. Gen.*, 605 F. App'x 951, 953 (11th Cir. May 22, 2015); *Ordaz-Gonzalez v. Holder*, 533 F. App'x 752, 754 (9th Cir. July 17, 2013); *Zarbaelov v. Holder*, 499 F. App'x 96, 98 (2d Cir. Oct. 9, 2012).

II. ACCURATELY DETERMINING ELIGIBILITY FOR CANCELLATION OF REMOVAL IS EXCEPTIONALLY IMPORTANT

"Deportation relief, like deportation itself, has deep roots." Allison Brownell Tirres, *Mercy in Immigration Law*, 2013 BYU L. REV. 1563, 1583 (2013). For more than a century, discretionary relief from removal has been an essential part of our immigration system, allowing the government to ensure deserving individuals are not removed. *See, e.g.*, Immigration Act of 1917, § 3, proviso 7, ch. 29, 39 Stat. 874, 878 ("[A]liens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe...."); *I.N.S. v. St. Cyr*, 533 U.S. 289, 294 (2001) (noting that this provision also provides relief in deportation proceedings), Immigration and Nationality Act of 1952, 8 U.S.C.

§ 1182(c) (granting the Attorney General broad discretion to admit excludable noncitizens); *Matter of Silva*, 16 I. & N. Dec. 26, 30 (BIA 1976) (applying that provision to deportation proceedings as well).

Fairly determining eligibility for the particular form of relief at issue here—cancellation of removal—has deep practical importance, since qualifying for cancellation of removal can mean the difference between deportation and a path to citizenship for the noncitizen, and the difference between stability or exceptional hardship for their U.S. citizen or lawful permanent resident family members. This vital form of relief already is open only to the most deserving applicants, particularly as the eligibility standards for cancellation of removal have become more stringent. The difficulty of meeting those criteria means that reversing the First Circuit's misinterpretation of the stop-time rule would not result in a windfall to noncitizens.

A. Eligibility For Cancellation Of Removal Is Deeply Important And Life-Altering For Noncitizens And Their Families

1. *Eligibility for cancellation can mean the difference between lawful permanent residence status and deportation*

The benefits of cancellation of removal are immense. Beyond the obvious fact that the individual will not be deported, receiving cancellation of removal can eventually lead to citizenship. If the noncitizen is eligible to apply and is granted cancellation of removal, the noncitizen will receive lawful permanent residence (commonly known as a "green card") and can apply for U.S. citizenship after at

least five years. 8 U.S.C. § 1427. The threshold for eligibility is high, but a significant number of noncitizens actually obtain cancellation of removal each year. Although the INA (8 U.S.C. § 1229b(e)(1)) allows only 4,000 cancellations of removal per year, immigration courts granted cancellation of removal in 3,358 cases in fiscal year 2016, 3,510 cases in fiscal year 2015, and 3,474 cases in fiscal year 2014. *See* EXECUTIVE OFFICE OF IMMIGRATION REVIEW, FY 2016 STATISTICS YEARBOOK at N1 (Mar. 2016). For over three thousand immigrants each year, then, a cancellation determination allows them to remain in the United States and avoid uprooting their lives.

The consequence of deeming an individual who would otherwise receive cancellation ineligible on the basis of the stop-time rule is, of course, dire. Deportation is a harsh consequence that should be limited to only those noncitizens Congress clearly intended to be subject to removal—indeed, in the context of cancellation of removal, deportation is a consequence that by definition imposes extraordinary harms on not just noncitizens petitioning for relief, but also their U.S. citizen or lawful permanent resident relatives. Because "deportation is a drastic measure and at times the equivalent of banishment or exile," the Court has noted that it "will not assume that Congress meant to trench on [a noncitizen's] freedom beyond that which is required by the narrowest of several possible meanings of [statutory language]." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948); *see also Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) ("We have long recognized that deportation is a particularly severe 'penalty'" (citing *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893));

Jordan v. De George, 341 U.S. 223, 243 (1951) (Jackson, J., dissenting) (removal means "a life sentence of exile from what has become home, of separation from his established means of livelihood for himself and his family of American citizens"); *Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947) ("Deportation can be the equivalent of banishment or exile."); *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) ("[A]lthough deportation technically is not criminal punishment, it may nevertheless visit as great a hardship as the deprivation of the right to pursue a vocation or a calling"); *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (noting that deportation "may result also in loss of both property and life, or of all that makes life worth living").

The effects of deportation in this circumstance are long-lasting: For most unsuccessful applicants for cancellation of removal, the path back to the United States is strewn with obstacles, some requiring many years outside the United States before they can be reunited with their family members. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(A)(ii)(I)-(II) (barring any noncitizen who "has been ordered removed" from being admitted to the United States "within 10 years of the date of such alien's departure or removal"); 8 U.S.C. § 1182(a)(9)(C)(i)(II) (permanently barring any noncitizen "who enters or attempts to reenter the United States without being admitted" after being ordered removed). And deportation leads to dire consequences for the noncitizen's U.S. citizen or lawful permanent resident family members, who are forced to choose between two bad options: staying behind without their family member, who is possibly the breadwinner or primary caregiver, or accompa-

nying their family member to a foreign country where they may have no family or community ties. *See, e.g.*, Luis H. Zayas & Laurie Cook Heffron, *Disrupting young lives: How detention and deportation affect US-born children of immigrants*, AM. PSYCH. ASSOC. (Nov. 2016); Lisseth Rojas-Flores et al., *Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation*, 9 PSYCH. TRAUMA: THEORY, RESEARCH, PRACTICE, & POLICY, 352, 352-61 (2017); Luis H. Zayas et al., *The Distress of Citizen Children with Detained and Deported Parents*, 24 J. OF CHILD & FAMILY STUDIES, 3213, 3213-23 (Nov. 2015); Kalina M. Brabeck et al., *The Psychosocial Impact of Detention and Deportation on U.S. Migrant Children and Families*, 84 AM. J. OF ORTHOPSYCHIATRY, 496-505 (2014).

2. *Cancellation of removal often provides the only relief available for noncitizens in removal proceedings*

Today, cancellation of removal is often the only form of relief available to those in removal proceedings; there are very few additional ways that otherwise-removable noncitizens can remain in the country. Of those few avenues available, most of these forms of relief are available in particularized situations that exclude many noncitizens from eligibility.

For example, so-called T and U visas are a narrow form of relief available specifically for noncitizens who are victims of human trafficking or criminal activities, respectively. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1477-80 (2000). Making out a

claim for asylum also requires specific circumstances that preclude many noncitizens from eligibility: Asylum claims must be made within one year of entry, 8 U.S.C. § 1158(a)(2)(B), and applicants must demonstrate they have a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" if forced to return. *Id.* § 1101(a)(42). Notably, neither T and U visas nor asylum helps to protect people on account of deep family connections in the United States, the motivating rationale behind cancellation of removal.

As a result of these limits, cancellation of removal is the only form of relief available to many immigrants who seek to remain in the United States.

B. The Threshold For Eligibility For Cancellation Of Removal Is High, Ensuring That Only The Most Deserving Noncitizens Are Eligible

The threshold for eligibility for cancellation of removal was heightened considerably by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (1996). IIRIRA "narrowed the forms of relief . . . that may be applied for as a defense to removal in immigration court." Edward R. Grant, *Laws of Intended Consequences: IIRIRA and Other Unsung Contributors to the Current State of Immigration Litigation*, 55 CATH. U. L. REV. 923, 933 (2006); *see also St. Cyr*, 533 U.S. at 297 (describing how IIRIRA restricted the availability of discretionary relief to noncitizens in removal proceedings).

IIRIRA repealed a prior form of relief called "suspension of deportation" and replaced it with cancellation of removal, imposing an increased continuous residence requirement and increased hardship standard in the process. Suspension of deportation had a seven-year continuous presence requirement and a standard of "extreme hardship" that could include hardship to the noncitizen himself. *See* IIRIRA § 304(a)(3), 8 U.S.C. § 1229b(a)-(b); *see also In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 64-65 (BIA 2001); *In re Nolasco-Tofino*, 22 I. & N. Dec. 632, 641 (BIA 1999). Cancellation of removal requires ten years of continuous residence, and the new hardship standard requires a showing of "exceptional and extremely unusual hardship," not to the noncitizen himself, but to an immediate family member (not including a sibling) who must be a United States citizen or lawful permanent resident. 8 U.S.C. § 1229b(b)(1)(D).

As noted above, IIRIRA also limited the number of noncitizens who could be granted this newly restricted form of relief, providing that the government "may not cancel the removal . . . of a total of more than 4,000 aliens in any fiscal year." 8 U.S.C. § 1229b(e)(1). IIRIRA also narrowed judicial review of immigration decisions, repealing provisions that had allowed noncitizens in custody to seek review of a deportation order in district court: Now, "a court cannot review the denial of most types of relief from removal that are granted at the discretion of the immigration officer or immigration judge, including . . . cancellation of removal." MARGARET MIKYUNG LEE, CONGRESSIONAL RESEARCH SERVICE, AN OVERVIEW OF JUDICIAL REVIEW OF IMMIGRATION MATTERS

at 3 (Sept. 11, 2013), htts://fas.org/sgp/crs/homesec/R43226.pdf; *see* 8 U.S.C. § 1252(a)(2).

All told, to be eligible for cancellation of removal, a noncitizen who is not a lawful permanent resident must have been physically present in the United States for a continuous period of not less than 10 years; must have been a person of "good moral character" during such period; must not have been convicted of certain criminal offenses, including an aggravated felony; and also must establish "exceptional and extremely unusual hardship" to a family member who is a U.S. citizen or lawful permanent resident. 8 U.S.C. § 1229b(b)(1).

Experience has demonstrated just how strenuous these statutory requirements are to satisfy. For example, many noncitizens are disqualified from eligibility for cancellation of removal based on relatively minor past criminal offenses. Even noncitizens who are lawful permanent residents are ineligible for cancellation if they have been convicted of an "aggravated felony," a category that in fact sweeps in many "non-violent, fairly trivial misdemeanors." Hon. Dana Leigh Marks, Hon. Denise Noonan Slavin, *A View Through the Looking Glass: How Crimes Appear from the Immigration Court Perspective*, 39 FORDHAM URB. L.J. 91, 92 (2011); *see also* AMERICAN IMMIGRATION COUNCIL, AGGRAVATED FELONIES: AN OVERVIEW (Dec. 16, 2016), https://www.americanimmigrationcouncil.org/research/aggravated-felonies-overview (noting that "an 'aggravated felony' does not require the crime to be 'aggravated' or a 'felony,'" but instead "includes many nonviolent and seemingly minor offenses"). And

noncitizens who are not lawful permanent residents are rendered ineligible by an even broader range of criminal offenses. 8 U.S.C. § 1229b(b)(1)(C).

The requisite "hardship" showing is also exceedingly demanding. As interpreted by the BIA, exceptional and extremely unusual hardship requires that hardship "to the alien's relatives . . . must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *In re Monreal-Aguinaga*, 23 I. & N. Dec. at 62 (quoting H.R. Rep. No. 104-828, at 213 (1996)). The BIA has emphasized that this standard of hardship "is significantly more burdensome than the former 'extreme hardship' standard," and adjudicators have declined to find requisite hardship in a number of sympathetic situations. *In re Andazola-Rivas*, 23 I. & N. Dec. 319, 322 (BIA 2002).

In short, the only individuals for whom the stop-time rule makes a difference are those, like Mr. Pereira, who are the most deserving. Pet. at 16. For many of those individuals, cancellation is their only realistic chance at securing relief from removal. The question presented therefore governs whether lawful residents and citizens of this country are going to lose loved ones who have lived in this country for over a decade based on an incorrect interpretation of a statute. And correcting the widespread misapplication of the stop-time rule will not result in a windfall for immigrants—it will merely ensure the most deserving have an opportunity to make their case for relief. This Court should grant certiorari to correct the clear misreading of the INA perpetuated by the decision below.

III. THE DECISION BELOW IS BASED ON A CLEAR MISREADING OF THE PLAIN TEXT OF THE INA

There are many areas of legitimate complexity and ambiguity in the statutory labyrinth of our country's immigration scheme. *See, e.g.*, *Scialabba v. Cuellar de Osorio*, 134 S. Ct. 2191, 2194 (2014) (finding ambiguity regarding whether BIA should permit the issuance of visas for adults who initially qualified for visas as children but "aged out" under § 1153(h)(3)); *Holder v. Martinez Gutierrez*, 566 U.S. 583, 590 (2012) (finding ambiguity regarding whether BIA should impute parent's years of continuous residence on child under § 1229b(a)). The issue before the Court here, however, is simply not one of them.

As the petition details, the question of statutory interpretation at issue here is straightforward: Whether the government can trigger the stop-time rule, cutting off a noncitizen's period of continuous residence, by serving a "notice to appear under section 1229(a)," 8 U.S.C. § 1229b(d)(1), that lacks section 1229(a)'s statutorily mandated definition of what constitutes a notice to appear. The plain text of § 1229b(d)(1) provides a clear answer: The government can only effectively trigger the stop-time rule by serving a "notice to appear *under section 1229(a)*." *Id.* Section 1229(a) defines a "notice to appear" as "written notice . . . specifying" certain information, including the "time and place at which the proceedings will be held." 8 U.S.C. § 1229(a)(1).

The BIA's clumsy attempt to twist this clear statutory mandate into ambiguity is erroneous, and the First Circuit's deference to this misreading of the

plain text is misguided. The government's interpretation reads the "specifying" clause out of the statute, and necessarily means that a "written notice" of *anything or nothing at all* would qualify as a "notice to appear under section 1229(a)." In response to the Third Circuit's observation of those absurd implications, the First Circuit suggested that *some* of the information "specified" in section 1229(a) might be required, just not the date and time of the removal hearing. Pet. App. 8a-9a n.5. But there is no textual basis whatsoever for that suggestion; the "specifying" clause either has force or not, and both basic principles of statutory interpretation and common sense dictate that it does.

The government's reading also creates perverse incentives: If the government can stop the clock on the continuous residence requirement by sending a document without a hearing date, it reduces the imperative to calendar matters and move the process along. That incentive to delay is especially concerning in light of the absence of any legal requirement ensuring prompt proceedings. *Supra* at 7-8.

The government's position disregards basic principles of statutory interpretation, with significant practical consequences for thousands of noncitizens, their families, and their communities. This Court should intervene to ensure that the fate of thousands of noncitizens and their families is not left to an arbitrary matter of geography, and reverse the decision below.

CONCLUSION

For all these reasons, as well as those presented in the petition for certiorari, the petition should be granted.

Respectfully submitted,

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